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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
ILLINOIS BELL TELEPHONE )  
COMPANY (SBC ILLINOIS) AND KMC )  
TELECOM, INC. )  
 ) No. 04-0430  
Joint Petition for Approval of )  
Fourth Amendment to the )  
Interconnection Agreement )  
dated May 26, 2004, pursuant )  
to 47 U.S.C. Section 252. )

Chicago, Illinois  
July 12, 2004

Met pursuant to notice at 10:45 a.m.  
BEFORE:

MR. JOHN RILEY, Administrative Law Judge

1        APPEARANCES:

2        MR. JAMES A. HUTTENHOWER  
3        225 West Randolph Street, Suite 25-D  
4        Chicago, Illinois 60606  
5        Appearing for SBC;

6        MR. DOUGLAS NELSON  
7        1755 North Brown Road  
8        Lawrenceville, Georgia 30443  
9        Appearing for KMC Telecom, Inc.  
10       (telephonically);

11       MR. JAMES E. WEGING  
12       160 North LaSalle Street, Suite C-800  
13       Chicago, Illinois 60601  
14       Appearing for Staff.

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26       SULLIVAN REPORTING COMPANY, by  
27       Julia C. White, CSR  
28       License No. 084-004544

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1 JUDGE RILEY: Pursuant to the direction of the  
2 Illinois Commerce Commission, I now call  
3 Docket 04-0430. This is a Joint Petition between  
4 Illinois Bell Telephone Company (SBC Illinois) and  
5 KMC Telecom, Incorporated, for Approval of the Fourth  
6 Amendment to the Interconnection Agreement dated  
7 May 26, 2004, Pursuant to 47 U.S.C. Section 252.

8 Counsel for SBC, would you enter an  
9 appearance for the record, please.

10 MR. HUTTENHOWER: James Huttenhower,  
11 H-u-t-t-e-n-h-o-w-e-r, 225 West Randolph Street,  
12 Suite 25-D, Chicago, Illinois 60606.

13 JUDGE RILEY: And for KMC Telecom.

14 MR. DOUGLAS NELSON: Douglas Nelson, business  
15 address 1755 North Brown Road in Lawrenceville,  
16 Georgia, that's L-a-w-r-e-n-c-e-v-i-l-l-e; and the  
17 zip is 30443.

18 JUDGE RILEY: Thank you.

19 And for Staff.

20 MR. WEGING: James Weging, W-e-g-i-n-g, 160  
21 North LaSalle Street, Suite C-800, Chicago, Illinois  
22 60601, (312)793-2877, appearing on behalf of

1 Commission Staff.

2 JUDGE RILEY: Thank you.

3 And I'm going to turn to Commission  
4 Staff at this point and ask whether or not a verified  
5 statement has been filed on this matter?

6 MR. WEGING: A verified statement has not been  
7 filed in this matter.

8 JUDGE RILEY: And would Staff enlighten us as  
9 to why.

10 MR. WEGING: Some time ago, I sent an e-mail,  
11 June 10th, concerning this case as well as another  
12 amendment case, 04-0427, which is pending before  
13 Judge Cole, that KMC Telecom, Inc., had had its  
14 certificates in Illinois cancelled, I believe, in  
15 August -- September of last year; and we -- and the  
16 two negotiated agreements were presented to us for an  
17 entity, which said that it was getting out of  
18 Illinois and not providing service to Illinois.

19 And we've had no actual response from  
20 KMC at all on whether they're coming back into  
21 Illinois, if this is a clerical error of some sort,  
22 et cetera; and, basically, as we said, in the e-mail,

1     our choices are to seek either withdrawal by them or  
2     a motion to dismiss on the basis that KMC Telecom,  
3     Inc., cannot operate in Illinois without a  
4     certificate of service authority.

5             JUDGE RILEY:   Well, let me ask Mr. Nelson then.

6                     Mr. Nelson, are you aware of Staff's  
7     position.

8             MR. DOUGLAS NELSON:   Yes, I am.   Actually, if I  
9     could explain the background.

10            JUDGE RILEY:   Certainly.

11           MR. DOUGLAS NELSON:   I was contacted by our  
12     outside counsel, which is Kelley, Drye & Warren in  
13     Washington, DC.   And they informed me of this pretty  
14     much a day before I left for two weeks on vacation,  
15     and I was under the impression that they were going  
16     to handle it.

17                   And the essential matter, though, is  
18     that these amendments, I believe, were filed in those  
19     old entity names that Staff Counsel's rights are no  
20     longer active entities in the State of Illinois  
21     simply because the underlying interconnection  
22     agreement was entered under those entities' names

1     when it was file some time ago. Since then, we've  
2     had a corporate restructuring; and I'd have to check  
3     to see exactly which entities were substituted, but  
4     it's probably -- there are probably two entities in  
5     Illinois for KMC. One is called KMC Telecom 3, LLC  
6     -- I'm sorry. In Illinois, it would be KMC  
7     Telecom 5, Incorporated, and KMC Data, LLC; and those  
8     are the names that the -- the agreements should now  
9     be under and that the amendment should have been  
10    filed under. And my understanding, those are active  
11    certificated entities in Illinois.

12                   And I'd be willing to make any kind of  
13    filing that's required in order to clarify that. At  
14    the time we did the corporate restructuring, we  
15    filed, you know, name change notices and assignment  
16    notices with SBC, I believe; and I would think we  
17    would have filed those with the Commission, as well.

18                   And so I think what happened is, the  
19    original agreement still has the old entities names  
20    on it; and that's kind of the source of the  
21    confusion.

22                   JUDGE RILEY: Mr. Waging, does that -- what is

1 Staff's response?

2 MR. WEGING: Well, yes. Counsel is quite  
3 correct that the other -- there were up to six  
4 different KMC entities that had licenses at one time  
5 or another in Illinois. The only two that are left  
6 are KMC Telecom 5 and KMC Data, LLC -- or I kept  
7 thinking it was Datalink, LLC, but I probably got the  
8 name wrong.

9 The real problem, of course, is that  
10 KMC Telecom 5, at least, which is the entity I looked  
11 at, has its own negotiated agreement and first  
12 amendment but not any further amendments other than  
13 that.

14 MR. DOUGLAS NELSON: Okay.

15 MR. WEGING: And, now, the case that's up here  
16 today that Judge Riley is hearing was an agreement  
17 between all of the KMC entities and all of the SBC  
18 entities. So it listed everybody, including the ones  
19 having Illinois certificates.

20 The problem is the other case, which  
21 is before Judge Cole, only listed KMC Telecom, Inc.  
22 It did not list any other KMC entities.

1           MR. DOUGLAS NELSON:   Okay.

2           MR. WEGING:   From what Mr. Huttenhower has  
3   said, is that these two amendments are kind of linked  
4   in some way so that they really can't -- one can't go  
5   without the other.

6                       And I don't know how to straighten  
7   this out.   Staff's preference is to have the parties  
8   withdraw the two cases --

9           MR. DOUGLAS NELSON:   Okay.

10          MR. WEGING:   -- and just refile it with the  
11   proper properties and making sure the agreements  
12   state the proper parties, as well.

13          MR. DOUGLAS NELSON:   Okay.

14          MR. WEGING:   Like I said, it's not a problem  
15   with this amendment; but it's a problem with the  
16   other amendment --

17          MR. DOUGLAS NELSON:   Okay.

18          MR. WEGING:   -- because there's not even a  
19   footnote saying, KMC Telecom and all of its --

20          MR. DOUGLAS NELSON:   Well, what we should --

21          MR. WEGING:   -- related entities.

22          MR. DOUGLAS NELSON:   Right.

1           MR. WEGING:   Go -- yeah.   Go ahead, please.

2           MR. DOUGLAS NELSON:   Okay.   I was just saying

3   we should probably withdraw both and then just refile

4   them under the proper entities.

5           JUDGE RILEY:   Well, let me ask SBC, what's your

6   response to that?

7           MR. HUTTENHOWER:   That's -- that's fine with

8   us.

9           JUDGE RILEY:   Okay.

10          MR. WEGING:   And, of course, that's fine with

11   Staff.   What we're really having a problem with is

12   that Mr. Huttenhower and I are required to file

13   briefs in the other case by Friday because the other

14   ALJ has moved on it extremely fast.

15          MR. DOUGLAS NELSON:   Could we file a joint

16   motion to withdraw the amendments?

17          MR. HUTTENHOWER:   Yes.   I -- you know, I

18   recognize you were on vacation and so I was having

19   some communications with Ms. Johnson -- never

20   direct -- always sort of by leaving each other

21   messages.   And at one point, I sent down a sample of

22   what we could file; and then we didn't get any

1 further. I didn't -- I didn't hear back from her,  
2 and I got busy with other matters. So I didn't  
3 follow up.

4 MR. DOUGLAS NELSON: Well, I apologize. I  
5 was -- it was -- I -- you know, it was definitely me  
6 who let it slip through the cracks. I honestly was  
7 under the impression that our outside counsel was  
8 going to get with you. And maybe the disconnect was  
9 just that you didn't have his name or something.

10 MR. WEGING: Well, I -- just for the record, I  
11 was in contact with Mr. Lever at Kelley and Drye --

12 MR. DOUGLAS NELSON: That would be it.

13 MR. WEGING: -- who was handling -- who handled  
14 your certificate cancellation, but he indicated that  
15 he wasn't the regular attorney for KMC; and he -- I  
16 talked to him this morning, and apparently no one  
17 ever got back to him to handle the matters.

18 MR. DOUGLAS NELSON: Okay. Well, that's  
19 probably my fault.

20 JUDGE RILEY: Well, am I taking too simplistic  
21 for you of this; or is the joint motion to withdraw  
22 going to solve the problem?

1           MR. WEGING:   Of course it will solve the  
2   problem.

3           JUDGE RILEY:   Okay.

4           MR. DOUGLAS NELSON:   I agree.

5           JUDGE RILEY:   All right.

6           MR. HUTTENHOWER:   Mr. Nelson, I can send you  
7   something later this morning.

8           MR. DOUGLAS NELSON:   That would be great.

9           MR. HUTTENHOWER:   If it's still morning.

10          MR. DOUGLAS NELSON:   And let me give you my  
11   phone number if you need -- well, you obviously have  
12   my phone number.

13          JUDGE RILEY:   985-6275?

14          MR. DOUGLAS NELSON:   Yeah.

15          JUDGE RILEY:   Yeah, we've got that.

16          MR. DOUGLAS NELSON:   Okay.   Yeah, and that  
17   should do it.

18          JUDGE RILEY:   Okay.   I have no expectation that  
19   we're going to have to reconvene on this then.   But  
20   what I'm going to do just for the sake of  
21   administrative purposes and to satisfy our Clerk's  
22   Office, how soon -- can you give me an estimate as to

1     how soon you think you can get that filed?

2             MR. HUTTENHOWER:   Well, I can send it out

3     today -- you know, send it by e-mail today; and

4     assuming, you know, he -- that Mr. Nelson faxes it

5     back or whatever --

6             JUDGE RILEY:   Right.

7             MR. HUTTENHOWER:   -- I could probably file it

8     either later today or tomorrow.

9             JUDGE RILEY:   Okay.   So it will have the -- you

10    know, whatever is needed on there and it will

11    involve --

12            MR. HUTTENHOWER:   Yeah.

13            JUDGE RILEY:   -- the bells and whistles and --

14            MR. HUTTENHOWER:   Yeah.

15            JUDGE RILEY:   -- everything.   Okay, fine.

16            MR. DOUGLAS NELSON:   Yeah, and I'll definitely

17    sign it today.

18            JUDGE RILEY:   All right, then.   Excellent.

19            MR. WEGING:   Thank you.

20            MR. DOUGLAS NELSON:   Thank you.   I apologize

21    for the confusion that you had to go through all of

22    this.

1           JUDGE RILEY:   Okay.   Then I will not -- well,  
2   I'm not going to mark this heard and taken today.  
3   Obviously, I'm not going to close the record until  
4   that -- until that matter is on -- until it is on  
5   file.

6           MR. HUTTENHOWER:   I mean, do you want to set  
7   like a dummy hearing for Friday?

8           JUDGE RILEY:   That's exactly what I was going  
9   to do.

10          MR. WEGING:   Not Friday.   I am gone on Friday.

11          JUDGE RILEY:   No.   I was going to give it a  
12   little bit longer than that.

13          MR. HUTTENHOWER:   Well, it's a dummy rule.  
14   Well, you're attendance is essential, Jim.

15          MR. WEGING:   Thank you.

16          JUDGE RILEY:   What I was going to suggest is  
17   that I just set it -- what I call an artificial  
18   hearing.

19                        There will be no -- Mr. Nelson, there  
20   will be no reason for us to reconvene on this; but  
21   just to satisfy the Clerk's Office, I have to put  
22   another date on this until it is actually withdrawn.

1           MR. DOUGLAS NELSON:   Okay, great.

2           JUDGE RILEY:   So what I'll do is, I'll just  
3   note that this is going to be down for the afternoon  
4   of July 21st; and I fully expect to have the  
5   withdrawal order prepared.

6           MR. DOUGLAS NELSON:   Okay.   Mr. Huttenhower, do  
7   you have my e-mail?

8           MR. HUTTENHOWER:   Yeah, I have it from earlier.

9           MR. DOUGLAS NELSON:   Okay, great.

10          JUDGE RILEY:   All right, then.

11          MR. DOUGLAS NELSON:   We should be set.

12          JUDGE RILEY:   Okay.   Just exchange the  
13   paperwork then, and Staff is -- Staff is perfectly --

14          MR. WEGING:   Yes.   I mean, we kind of thought  
15   it was just a -- kind of a clerical kind of matter --

16          JUDGE RILEY:   Okay.

17          MR. WEGING:   -- but it's a difficult matter  
18   when the --

19          JUDGE RILEY:   Right.

20          MR. WEGING:   -- when one of the entities are  
21   different.

22          MR. DOUGLAS NELSON:   Oh, how can you tell?   I

1 mean, absolutely.

2 JUDGE RILEY: All right then, Mr. Nelson.

3 Thank you very much --

4 MR. DOUGLAS NELSON: Thank you.

5 JUDGE RILEY: -- for helping us out here.

6 Is there anything further?

7 MR. WEGING: Nothing from Staff.

8 MR. DOUGLAS NELSON: Not from me.

9 JUDGE RILEY: Okay. Then I will continue this  
10 matter to July 21st. And as soon as I see the  
11 filing, I'll have an order of withdrawal for the  
12 Commission; and we'll get rid of this before  
13 September 7th.

14 MR. DOUGLAS NELSON: Beautiful.

15 JUDGE RILEY: Thank you very much, gentlemen.

16 (Whereupon, the above-entitled  
17 matter was continued to  
18 July 21, 2004.)

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